

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

MR. SOLOMON JOHNSON,)	
)	Civil Action No. 13 – 531
Plaintiff,)	
)	Chief District Judge Joy Flowers Conti
v.)	Chief Magistrate Judge Lisa Pupo Lenihan
)	
JOSEPH MAZURKIEWICZ, <i>et al.</i> ,)	
)	
Defendants.)	
)	

MEMORANDUM ORDER

AND NOW, this 20th day of August, 2014, after plaintiff Mr. Solomon Johnson (“Plaintiff”) initiated the above-captioned case; and after defendants Beers, Gettins and Mazurkiewicz filed a motion to dismiss Plaintiff’s amended complaint; and after a Report and Recommendation was issued by the magistrate judge recommending that said motion to dismiss be granted in part and denied without prejudice in part, and further recommending that defendant Yothers be dismissed from this action *sua sponte* and that Plaintiff be allowed to amend his amended complaint with respect to several claims; and after the parties were served with the Report and Recommendation and no objections were filed by the August 8, 2014 deadline; and upon consideration of the Report and Recommendation and an independent review of the record,

IT IS HEREBY ORDERED that the Report and Recommendation (ECF No. 37) is **ADOPTED** as the opinion of this court.

IT IS FURTHER ORDERED that, for the reasons set forth in the Report and Recommendation, the motion to dismiss filed by defendants Beers, Gettins and Mazurkiewicz

(ECF No. 34) is granted in that Plaintiff's claims predating April 9, 2011 are dismissed with prejudice because they are barred by the statute of limitations and also granted as to Plaintiff's claims against the defendants in their official capacities. The motion is denied without prejudice to the extent that defendants seek dismissal of Plaintiff's amended complaint for failure to exhaust his administrative remedies pursuant to the Prison Litigation Reform Act.

IT IS FURTHER ORDERED that, pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii), defendant Yothers is dismissed from this action because Plaintiff failed to state a claim against her upon which relief may be granted.

IT IS FURTHER ORDERED that Plaintiff's due process claim based on his initial placement in administrative custody is dismissed with prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii).

IT IS FURTHER ORDERED that Plaintiff amend his complaint with respect to the following claims: (1) the mail tampering retaliation claim against defendants Gettins, Beers and Kramer; (2) the due process claim against defendant Bascarino, only for the duration of the time Plaintiff spent in administrative custody; and (3) the deliberate indifference claim against defendant Mazurkiewicz.

IT IS FURTHER ORDERED that this case will be dismissed with prejudice for failure to prosecute if Plaintiff fails to file his second amended complaint within thirty (30) days of the date of this order.

By the Court:

/s/ Joy Flowers Conti
Joy Flowers Conti
Chief United States District Judge

cc: Solomon Johnson
GX7163
SCI Benner
301 Institution Drive
Bellefonte, PA 16823
(Via First Class Mail)

Counsel of Record
(Via CM/ECF Electronic Mail)